©
Government of Kerala
1979

Reg. No. KL/TV/12

KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXIV] Trivandrum, Thursday, 8th March 1979 / 17th Phalguna 1900 [No. 166

SECRETARIAT OF THE KERALA LEGISLATURE

NOTIFICATION

No. 2698-LA4A/79. *Dated, Trivandrum 8th March, 1979.*

The Kerala Cashew Factories (Requisitioning) Bill, 1979 together with the Statement of Objects and Reasons, the Financial Memorandum and the Memorandum regarding Delegated Legislation is published, under Rule 69 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

DR. R. PRASANNAN,
Secretary,
Legislative Assembly.

PRINTED AND PUBLISHED BY THE S.G.P. AT THE GOVERNMENT PRESS, TRIVANDRUM, 1979.

33/859/MC.

Fifth Kerala Legislative Assembly

Bill No. 105

THE KERALA CASHEW FACTORIES (REQUISITIONING) BILL, 1979

A

BILL

to provide for the requisitioning of cashew factories leased out to the Kerala State Cashew Development Corporation.

Preamble.—WHEREAS certain cashew factories had been leased out by the owners thereof to the Kerala State Cashew Development Corporation Limited, which is a company owned by the Government of Kerala;

AND WHEREAS such cashew factories were at the time of the lease either closed down or run by persons other than the owners thereof;

AND WHEREAS the term of lease in respect of some such cashew factories has expired and the owners of some of such factories are not willing to extend the term of the lease;

AND WHEREAS suits have been filed in the courts by the owners of some of such cashew factories for delivery of possession thereof;

AND WHEREAS in the interests of the workers of the cashew factories it is considered necessary to enable the said Corporation to continue in possession and management of such of those cashew factories which if given back to the owners thereof could not be run properly and in accordance with law and would either be sold or leased out to private individuals;

BE it enacted in the Thirtieth Year of the Republic of India as follows:—

1. *Short title extent and commencement.*—(1) This Act may be called the Kerala Cashew Factories (Requisitioning) Act, 1979.

(2) It extends to the whole of the State of Kerala.

(3) It shall be deemed to have come into force on the 13th day of November, 1978.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) "Cashew factory" means a factory as defined in the Factories Act, 1948 (Central Act 63 of 1948), wherein processing of cashew nuts is being carried on and includes the factory building, the site thereof and the buildings and lands appurtenant thereto used or necessary for, or in connection with, the working of the factory;

(b) "Corporation" means the Kerala State Cashew Development Corporation Limited, incorporated under the Companies Act, 1956 (Central Act 1 of 1956);

(c) the expression "person interested", in relation to any cashew factory, includes all persons claiming or entitled to claim an interest in the amount payable on account of the requisitioning of that factory under this Act;

(d) "prescribed" means prescribed by rules made under this Act;

(e) "processing", with reference to cashewnuts, includes extraction of cashewnut oil, roasting, shelling, peeling, grading and treating of cashewnuts;

(f) "Tribunal" means the Tribunal appointed under section 6.

3. *Power to requisition cashew factories.*—(1) Where the Government are satisfied that if the owner of a cashew factory which is in the possession of the Corporation under a lease, whether current or time-expired, is put in possession thereof, such owner could not run that factory properly and in accordance with law and would either sell it or lease it out to any private individual and there would be large scale unemployment of the workers of that factory or their conditions of service would be adversely affected, the Government may, notwithstanding any judgment, decree or order of any court, by order published in the Gazette, requisition that cashew factory for such period not exceeding five years as may be specified in the order and may make such further orders as appear to them to be necessary or expedient in connection with the requisition:

Provided that before making an order under this sub-section in respect of a cashew factory, the Government shall give the owner of that factory and every person interested in that factory a notice of their intention to take action under this sub-section and the grounds therefor and consider the objections that may be preferred in pursuance of such notice.

(2) Where a cashew factory is requisitioned under sub-section (1), such cashew factory together with all machinery, other accessories and other movable properties as were immediately before the date of publication of the order under sub-section (1) in the possession of the Corporation and all books of account, registers and other documents relating thereto shall vest in the Government with effect from the said date.

(3) The Government may, by order in writing, direct that a cashew factory vested in them under sub-section (2) shall, instead of continuing to vest in them, vest in the Corporation with effect from such date, not being a date earlier than the date of publication of the order under sub-section (1), as may be specified in the order.

(4) Where an order vesting a cashew factory in the Corporation is made under sub-section (3), all rights, liabilities and obligations of the Government in relation to such factory, shall, on and from the date of such vesting, be deemed to have become the rights, liabilities and obligations respectively of the Corporation.

4. *Release from requisition.*—(1) The Government may at any time release from requisition any cashew factory requisitioned under section 3 and thereupon the Government or the Corporation, as the case may be, shall as far as possible restore the factory in as good a condition as it was when possession thereof was taken by virtue of the lease executed by it with the owner of the cashew factory, subject to the provisions contained in such lease and to the changes caused by reasonable wear and tear and irresistible force.

(2) Where any cashew factory is to be released from requisition under sub-section (1), the Government may, after such inquiry, if any, as they may in any case consider necessary to make or cause to be made, specify by order in writing the person to whom possession of such cashew factory is to be given.

(3) The delivery of possession of a cashew factory to the person specified in an order under sub-section (2) shall be a full discharge of the Government and, in the case of a cashew factory vested in the Corporation, also of the Corporation from all liabilities in respect of such cashew factory, but shall not prejudice any right in respect of that cashew factory which any other person may be entitled by due process of law to enforce against the person to whom possession of the cashew factory is given.

(4) Where any person to whom possession of a cashew factory is to be given is not found and has no agent or other person empowered to accept delivery on his behalf, the Government shall cause a notice declaring that the cashew factory is released from requisition to be affixed on some conspicuous part of the premises

of the cashew factory and shall also publish the notice in the Gazette.

(5) Where a notice referred to in sub-section (4) is published in the Gazette, the cashew factory specified in such notice shall cease to be subject to requisition on and from the date of such publication and shall be deemed to have been delivered to the person entitled to possession thereof, and the Government or the Corporation shall not be liable for any compensation or other claim in respect of such cashew factory for any period after the said date.

(6) Where any cashew factory requisitioned under section 3 or any material part thereof is wholly destroyed or rendered substantially and permanently unfit for carrying on processing of raw cashew nuts by reason of fire, earthquake, tempest, flood or violence of any mob or other irresistible force, the requisition shall, at the option of the Government, be void:

Provided that the benefit of this sub-section shall not be available to the Government where the injury to such cashew factory is caused by any wrongful act or default of the Government or the Corporation.

5. *Payment of amount.*—(1) Where any cashew factory is requisitioned under this Act there shall be paid rent for that cashew factory, the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say,—

(a) where the amount of rent can be fixed by agreement, it shall be paid in accordance with such agreement;

(b) where no such agreement can be reached, the Government shall by order—

(i) determine the rent at a rate which shall be in excess of the amount of rent which was being paid by the Corporation for that cashew factory immediately before the date of publication of the order under sub-section (1) of section 3, by twenty-five per cent of such amount; and

(ii) specify the person or persons to whom such rent shall be paid.

(2) Any person aggrieved by an order of the Government under sub-section (1) may, within thirty days from the date of such determination, apply to the Tribunal for modification of such order:

Provided that the Tribunal may, entertain the application after the expiry of the said period of thirty days if it is satisfied

that the applicant was prevented by sufficient cause from presenting the application in time.

(3) In determining the amount of rent payable for a cashew factory requisitioned under this Act, the Tribunal shall have regard to—

(a) the nature and plinth area of the buildings and other structures and the value of the accessories and fixtures *minus* depreciation at the rate of five per cent per annum subject to a maximum of fifty per cent depreciation;

(b) the capacity of the cashew factory for processing raw cashew nuts;

(c) rate of rent of other cashew factories in the locality at the commencement of this Act; and

(d) expenses on account of re-occupying the premises upon release from requisition.

6. *Tribunal.*—(1) The Government shall, by notification in the Gazette, appoint a Tribunal to exercise the powers conferred on the Tribunal under this Act.

(2) The Tribunal shall consist of a person who is a District Judge.

7. *Appeals from decision of Tribunal.*—Any person aggrieved by any decision of the Tribunal may, within thirty days from the date of such decision, prefer an appeal to the High Court against such decision:

Provided that the High Court may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

8. *Mode of payment of rent.*—The amount of rent payable under this Act shall, subject to any rules made thereunder, be paid by the Government to the person or persons entitled thereto by means of cheque:

Provided that the amount of rent payable under this Act in respect of a cashew factory vested in the Corporation in pursuance of an order made under sub-section (3) of section 3 shall be paid by the Corporation.

9. *Service of notice or order.*—(1) Every notice or order issued or made under this Act shall,—

(a) in the case of any notice or order affecting a corporation or firm be served in the manner provided for the service of

summons in rule 2 of Order XXIX or rule 3 of Order XXX, as the case may be, in the First Schedule to the Code of Civil Procedure, 1908 (Central Act V of 1908); and

(b) in the case of any notice or order affecting an individual person (not being a corporation or firm), be served on such person—

(i) by delivery or tendering it to that person; or

(ii) if it cannot be so delivered or tendered, by delivering or tendering it to any officer of such person or any adult male member of the family of such person, or by affixing a copy thereof on some conspicuous part of the premises in which that person is known to have last resided or carried on business or personally worked for gain, or failing service by these means.

(iii) by registered post.

(2) Where the ownership of the cashew factory is in dispute, or where the persons interested in the cashew factory are not readily traccable and the notice or order cannot be served without undue delay, the notice or order may be served by publishing it in the Gazette and where possible, by affixing a copy thereof on any conspicuous part of the premises of the cashew factory to which it relates.

10. *Protection of action taken in good faith.*—(1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

(2) No suit or other legal proceeding shall lie against the Government or the Corporation for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

11. *Bar of jurisdiction of civil courts.*—Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any matter which the Government or the Corporation or the Tribunal are or is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

12. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules for carrying out the purposes of this Act.

(2) Every rule made under this Act shall be laid as soon as may be after it is made, before the Legislative Assembly while it

is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

13. *Repeal and saving*.—(1) The Kerala Cashew Factories (Requisitioning) Ordinance, 1978 (26 of 1978), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act.

STATEMENT OF OBJECTS AND REASONS

The Kerala State Cashew Development Corporation Limited, set up by the Kerala Government in 1969 for rehabilitating a large number of workers who were thrown out of employment due to the closure of cashew factories, is at present running 34 cashew factories in the State. Of these, 7 factories were purchased by the Corporation and the remaining 27 factories were taken by the Corporation on long-term lease from the owners thereof. The cashew factories which were taken on long-term lease were, at the time of the lease, either closed down or run by persons other than the owners thereof. The term of lease in respect of some of such cashew factories had expired and the owners of some of such factories were not willing to extend further the term of the lease. Moreover, suits had been filed in the courts by some owners for delivery of possession of factories. If the Corporation was to hand over the factories to the owners, there was no guarantee that these factories would be run by the owners thereof maintaining the present employment conditions. It would have not only crippled the activities of the Corporation but would also have created grave labour problems.

2. In the interests of workers of the cashew factories, it was considered necessary to enable the Kerala State Cashew Development Corporation to continue in possession and management of such of those cashew factories which, if given back to the owners thereof, could not be run properly and in accordance with law and would either be sold or leased out to private individuals. It was, therefore, proposed to requisition such factories so that the Kerala State Cashew Development Corporation may continue to be in possession and management of those factories.

3. As the Legislative Assembly was not in session and as the matter could not wait till the next session of the Legislative Assembly, the Kerala Cashew Factories (Requisitioning) Ordinance, 1978 (26 of 1978), was promulgated by the Governor on the 7th day of November, 1978, to achieve the above object. The Bill seeks to replace the Ordinance by an Act of the Legislature.

FINANCIAL MEMORANDUM

Clause 5 of the Bill seeks to pay rent for tbe cashew factories requisitioned by Government, the amount of wbicb shall be determined in the manner and in accordance with the principles set out therein.

2. The rent is payable by the Kerala State Casbew Development Corporation Ltd. At the present rate, the Corporation would have to pay an amount of Rs. 20,49,000 towards rent to the existing 27 factories for a period of 5 years. Sub-clause (1) (b) (i) of clause 5 of tbe Bill provides for an enhancement of rent by twenty-five per cent. Thus an additional amount of Rs. 5.1 lakhs will be required to meet the enhancement of rent. This amount will also have to be paid by the Corporation. Besides, the requisitioning of cashew factories will involve incidental expenses, which may come approximately to Rs. 90,000. The constitution of the Tribunal envisaged under clause 6 of the Bill also involves financial commitment. This is roughly estimated to be rupees one lakh. Thus the total additional financial commitment is estimated to be Rs. 1.9 lakhs to be met from the Consolidated Fund of the State; the remaining amount of Rs. 25.59 lakhs is to be met by the Kerala State Cashew Development Corporation Ltd. from its own funds.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 3 of the Bill seeks to empower the Government to requisition, by order published in the Gazette, any cashew factory which is in the possession of the Kerala State Cashew Development Corporation Limited under a lease whether current or time expired, for sucb period not exceeding five years and to make such furtber orders as appear to them to be necessary or expedient in connection with such requisition, if they are satisfied that the factory if put in possession of the owner thereof, such owner could not run that factory properly and in accordance with law and would either sell it or lease it out to any private individual and there would be large scale unemployment of the workers of that factory or their conditions of service would be adversely affected.

2. Sub-clause (1) of clause 6 of the Bill seeks to empower the Government to appoint, by notification in the Gazette, a Tribunal to exercise the powers conferred on the Tribunal under the Act.

3. Clause 12 seeks to empower the Government to make rules to carry out the purposes of the Act.

4. The matters in respect of which orders or notifications may be issued or rules may be made relate to matters of an administrative nature or matters of procedure. The delegation of legislative power is thus of a normal character.

P. S. SREENIVASAN

©
Government of Kerala
1979

Reg. No. KL/TV/12

KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXIV] Trivandrum, Thursday, 8th March 1979 / 17th Phalguna 1900 [No. 167

GOVERNMENT OF KERALA

NOTIFICATION

UNDER SECTION 6 OF THE KERALA SURVEY AND BOUNDARIES ACT, 1961

No. LA2-78/79. *3rd March 1979.*

Whereas the Government have directed the survey of lands comprised in survey numbers noted below it is hereby notified under sub-section (1) of section 6 of the Kerala Survey and Boundaries Act, 1961 that survey operation will be started in the villages soon and the survey numbers of the said villages noted below will be demarcated and surveyed; and that every person claiming to be interested in the registered lands is hereby invited to attend immediately either in person or by agent on the surveyor employed in the locality and also from time to time when called upon for the purpose of pointing out the boundaries and supplying information in connection therewith.

Under sub-section (2) of section 6 of the said Act, this notification shall be held to be a valid notice to every person having any interest in the said lands.

Under sub-section (3) of section 6 of the above said Act, all the registered holders are hereby required:—

(a) to clear within 15 days by cutting down or removing any trees, jungle fences, standing crops or other material obstructions, the

boundaries or other lines, the clearance of which may be necessary for the purposes of the survey; and

(b) to provide labour at such time and for such periods as may from time to time be required by furnishing flag holders and chainmen; and

(c) to provide suitable survey marks and otherwise to give such assistance in the survey as may be demanded under the said Act or the rules made thereunder.

In any person fails to comply with these requisitions under clauses (a) to (c) mentioned above the work will be got done by employing hired labour and the cost thereof will be recovered from the defaulters as provided in the Act and rules made thereunder.

SCHEDULE

District.—Trivandrum.

Taluk.—Trivandrum. *Village.*—Muttathara.

Sl. No.	*Sy. No.*	*Sl. No.*	*Sy. No.*
1.	242	11.	288
2.	243	12.	346
3.	244	13.	347
4.	246	14.	350
5.	248	15.	352
6.	250	16.	488
7.	266	17.	490
8.	267	18.	399
9.	268	19.	400
10.	269		

Village.—Iranimuttom.

Sl. No.	*Sy. No.*
1.	214
2.	219
3.	320
4.	321
5.	322
6.	323
7.	334
8.	342
9.	344

(Sd.)

Trivandrum.

Special Tahsildar (LA)
N. H. No. III, Kovalam.

PRINTED AND PUBLISHED BY THE S.G.P. AT THE GOVERNMENT PRESS. TRIVANDRUM, 1979.